

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Order Instituting Investigation and Ordering Pacific Gas and Electric Company to Appear and Show Cause Why It Should not be Sanctioned for Violations of Article 8 and Rule 1.1 of the Rules of Practice and Procedure and Public Utilities Code Sections 1701.2 and 1701.3.

Investigation 15-11-015  
(Filed November 19, 2015)

**JOINT OPENING BRIEF OF THE SAFETY AND ENFORCEMENT DIVISION,  
THE OFFICE OF RATEPAYER ADVOCATES, THE UTILITY REFORM  
NETWORK, THE CITY OF SAN CARLOS, AND THE CITY OF  
SAN BRUNO ON WHETHER "CATEGORY 3" COMMUNICATIONS  
SHOULD BE INCLUDED IN THIS PROCEEDING**

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May 20, 2016

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In accordance with Assigned Administrative Law Judge (“ALJ”) Bushey’s May 9, 2016 e-mail Ruling in the above captioned proceeding, the Safety and Enforcement Division (“SED”), the Office of Ratepayer Advocates (“ORA”), The Utility Reform Network (“TURN”), the City of San Carlos, and the City of San Bruno (collectively “Joint Parties”) hereby file this Opening Brief on whether certain communications between Pacific Gas and Electric Company (“PG&E”) and the Commission should be included within the scope of this proceeding. The Joint Parties support requiring PG&E to conduct additional diligence into these communications (“category 3 e-mails”) in order to allow the Commission to complete its investigation into PG&E’s violations of Public Utilities Code Sections 1701.2 and 1701.3 and the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure.

**I. BACKGROUND**

The Commission issued the Ordering Instituting Investigation (“OII”) in the above captioned proceeding on November 15, 2015. Subsequently, on January 8, 2015, the

Assigned Commissioner and ALJ Issued a Ruling ordering parties “to engage in a substantive and detailed meet and confer process to develop an efficient procedural schedule proposal to resolve the issues identified in the Commission’s decision [and to] articulate issues of policy or law that remain pending and create a proposed briefing schedule.”<sup>1</sup>

On April 18, 2016, Parties filed “Joint Meet and Confer Process Report of the City of San Bruno, the City of San Carlos, the Office of Ratepayers Advocates, the Safety and Enforcement Division, the Utility Reform Network, and Pacific Gas and Electric Company.” (“Meet and Confer Report”). As detailed in the Meet and Confer Report, parties engaged in multiple meet and confer sessions in order to present the Assigned Commissioner and ALJ with a proposed process for resolving the OII.

All parties agree that 159 communications between PG&E and the Commission are within the scope of this proceeding. PG&E has agreed to respond to data requests concerning these communications as part of this OII. However, PG&E disagrees with Joint Parties on whether 21 additional communications, preliminarily identified by parties as category 3 e-mails, should be subject to discovery within the scope of this proceeding.<sup>2</sup>

## **II. DISCUSSION**

The Joint Parties believe that the 21 additional e-mails are within the scope of this proceeding and should be subject to discovery by parties to the OII. As described in the Meet and Confer report, the e-mails, alone, do not indicate that an Ex Parte violation definitely occurred. Instead, the e-mails “reference potential oral communications, including meetings, meals, encounters, or site visits involving PG&E personnel and CPUC personnel, but do not provide much detail concerning those events.”<sup>3</sup> This lack of

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<sup>1</sup> January 8, 2016 “Assigned Commissioner and ALJ’s Ruling Directing Parties to Engage in Meet and Confer Process and Setting Prehearing Conference,” p. 2.

<sup>2</sup> Attachment A to this pleading contains the Category 3 e-mails.

<sup>3</sup> Joint Meet and Confer Report, pp. 7-8.

detail is the reason that the Joint Parties seek additional information about these communications.

The Joint Parties believe that PG&E should provide the same diligence to the 21 category 3 e-mails that it has agreed to provide for the category 2 e-mails. This diligence process involves PG&E responding to data requests on the 24 category 2 e-mails, which essentially ask for confirmation that there has been no additional unreported or illegal ex parte communications. The data requests are structured consistent with Commission Rule 8.4 concerning Ex Parte Communications.<sup>4</sup> Similarly, the Joint Parties believe that PG&E should respond to the same types of questions regarding these category 3 e-mails.

While the Joint Parties do not know if follow up on the category 3 e-mails will lead to discovery of additional ex parte violations, the discovery associated with these emails should be within the scope of this proceeding so that the Commission and the public can learn if there were any other, so far unreported, illegal communications. The category 3 e-mails occurred between April 21, 2011 and February 6, 2014. This was a period when the Commission was considering several investigations into PG&E's conduct related to the San Bruno explosion. Many of the emails involve Senior PG&E management who were implicated by other improper ex parte communications that are already in the scope of the OII. Though it is not clear from the category 3 e-mails that an improper ex parte communication took place, it would be unreasonable to assume that no improper communications occurred without conducting additional follow up. For instance, one document, which has been identified by Tab 3-3 in Attachment A to this pleading, contains an e-mail exchange between PG&E employees Mr. Jacobson and Mr. Cherry. Mr. Jacobson warns Mr. Cherry "to be careful that this meeting stays away from issues being considered in the gas OIR or we risk having to file an ex parte..."

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<sup>4</sup> The data requests which PG&E has agreed to respond to are attached to the Joint Meet and Confer Report, Exhibit 3.

Mr. Cherry responds, “Agreed. We should not have a problem in this area.”<sup>5</sup> Given that the Commission is now aware of other violations of Ex Parte rules by Mr. Cherry, including substantive discussions with former President Peevey about numerous open proceedings, including the San Bruno investigations<sup>6</sup>, it is reasonable to follow up and seek additional assurance from PG&E that there were no other unreported violations.

Indeed, this is all that the Joint Parties seek: the opportunity to ask PG&E, as part of this proceeding, to conduct the same type of diligence about the category 3 e-mails that it has already agreed to provide for the category 2 e-mails, including additional e-mail searches and interviews, and to provide the results of that diligence to the parties. Such discovery is not unduly burdensome or unreasonable and will help the Commission to complete its investigation into PG&E’s compliance with Public Utilities Code Section 1701.2 and 1701.3, and Rule 1.1 and Article 8 of the Rules of Practice and Procedure.

### **III. CONCLUSION**

For all the foregoing reasons, the Joint Parties asks that the Assigned Commissioner and ALJ include the “category 3 e-mails” within the scope of the proceeding, and allow parties to conduct discovery on these emails, consistent with the other emails already in the scope of the proceeding. It is unreasonable to assume that there were no additional illegal ex parte communications without some further diligence into these communications.

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<sup>5</sup> Attachment A to this pleading, Tab 3-3.

<sup>6</sup> See OII, p.3 which references a “Notice of Improper Ex Parte Communications” filed by PG&E on October 6, 2014. That pleading described an improper ex parte communication between former President Peevey and Mr. Cherry on May 30, 2010 concerning proceedings A.09-12-020, A.09-09-021, A.09-12-002, R.09-01-019.

Respectfully submitted,

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